

Letter of Findings: 04-20130594
Gross Retail Tax
For the Years 2010, 2011, and 2012

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ISSUE

I. Gross Retail Tax – Interest Refund.

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-4-1](#); [IC 6-8.1-5-2](#); [IC 6-2.5-5-3\(b\)](#); [IC 6-8.1-3-17\(c\)](#); [IC 6-8.1-10-1\(a\)](#); [IC 6-8.1-10-1\(e\)](#).

Taxpayer argues that it is entitled to a refund of interest.

STATEMENT OF FACT

Taxpayer is an Indiana business which produces packaging materials. The Indiana Department of Revenue ("Department") conducted a sales/use tax audit of Taxpayer's business records and tax returns. The audit determined that Taxpayer owed additional tax and issued an assessment to that effect. Taxpayer paid the assessment but also submitted a protest challenging the assessment of interest. An administrative hearing was conducted and this Letter of Findings results.

I. Gross Retail Tax – Interest Refund.

DISCUSSION

The Department's audit found that Taxpayer failed to pay sales tax or self-assess use tax on certain items which Taxpayer mistakenly believed were exempt. As explained in the audit report, the items included cleaning supplies, building maintenance items, and paint along with "items for the comfort or convenience of employees and other miscellaneous items" In addition, Taxpayer failed to pay sales tax or self-assess use tax on "light bulbs [and] building materials used to repair a building's roof and an outside wall."

Pursuant to [IC 6-2.5-2-1](#), a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. Retail transactions generally involve the transfer of tangible personal property. [IC 6-2.5-4-1](#). A complementary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. [IC 6-2.5-3-2](#).

Because Taxpayer is in the business of producing packaging materials, Taxpayer believed it was entitled to an exemption on the items mentioned in the audit based on the "manufacturing exemption" found at [IC 6-2.5-5-3\(b\)](#). The exemption statute reads as follows:

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property. (Emphasis added).

However, Taxpayer now freely agrees that it was not entitled to the broad exemption claimed because the items at issue – such as cleaning supplies and light bulbs – are not directly used in the direct production of its packaging materials.

Instead, Taxpayer believes it is entitled to abatement of the interest on the amount of the assessment and that, because it has already paid the assessment, the Department should refund that amount.

[IC 6-8.1-10-1\(a\)](#) provides for the assessment of interest as follows:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Taxpayer does not challenge the Department's right to assess and collect interest. Taxpayer instead asks that the Department abate the interest charged because Taxpayer's reporting errors were not deliberate, that it acted in good faith, and that has instituted practices designed to mitigate or prevent further errors. However, [IC 6-8.1-10-1\(e\)](#) provides that, "Except as provided by [IC 6-8.1-3-17\(c\)](#) and [IC 6-8.1-5-2](#), the department may not waive the interest imposed under this section." [IC 6-8.1-3-17\(c\)](#) provides for the abatement of interest pursuant to the amnesty program for liabilities arising before July 1, 2004. [IC 6-8.1-5-2](#), in general, governs circumstances in which the three-year statute of limitations precludes the Department from assessing the base tax. Unfortunately, neither of the exceptions is applicable in this case.

The Department does not question Taxpayer's good faith attempt to fulfill its tax obligation nor does it question its commitment to improving its compliance efforts. However, the statute is unambiguous on the issue: "[T]he department may not waive the interest imposed under this section."

FINDING

Taxpayer's protest is respectfully denied.

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